

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

MELISSA ADAMS, an individual,

Case No. 6:12-cv-1476-AA

Plaintiff,

OPINION AND ORDER

v.

WELLS FARGO BANK NA, a foreign
business corporation, et al.,

Defendants.

AIKEN, Chief Judge:

Plaintiff filed suit in state court alleging a violation of Or. Rev. Stat. § 87.035(1), unlawful trade practices, and breach of the duty of good faith and fair dealing. Defendants removed the action to federal court and moved for dismissal on grounds of preemption and failure to state a claim. Plaintiff subsequently filed a Chapter 13 bankruptcy proceeding and now moves for voluntarily dismissal of this action pursuant to Federal Rule of Civil Procedure 41(a)(2). Defendants oppose the motion and argue

that the court should decide their motion to dismiss on the merits.

Under Federal Rule of Civil Procedure 41(a), once a defendant has filed an answer, an action may be dismissed only by court order and on terms that the court "considers proper." Fed. R. Civ. P. 41(a)(2). "A district court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result." Smith v. Lenches, 263 F.3d 972, 975 (9th Cir. 2001). Legal prejudice "means 'prejudice to some legal interest, some legal claim, some legal argument.'" Id. at 976 (quoting Westlands Water Dist. v. United States, 100 F.3d 94, 97 (9th Cir. 1996)). "Uncertainty because a dispute remains unresolved is not legal prejudice." Westlands, 100 F.3d at 97.

I exercise my discretion to dismiss this action without prejudice. I agree with plaintiff that dismissal furthers the interests of judicial economy and efficiency given her pending bankruptcy proceeding. Further, should plaintiff's claims arise in the bankruptcy proceeding or a related adversary proceeding, defendants may present the arguments they raised in their motion to dismiss. Thus, I find no plain legal prejudice to defendants. See id. "[P]lain legal prejudice does not result merely because the defendant will be inconvenienced by having to defend in another forum or where a plaintiff would gain a tactical advantage by that dismissal.").

CONCLUSION

Accordingly, plaintiff's motion to dismiss (doc. 18) is GRANTED and this case is dismissed without prejudice. All pending motions (docs. 12, 14) are DENIED as moot. Judgment shall issue accordingly.

IT IS SO ORDERED.

Dated this 26th day of November, 2012.

A handwritten signature in cursive script, appearing to read "Ann Aiken", is written over a horizontal line.

Ann Aiken
United States District Judge